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IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 430

ARROW TRANSPORTATION COMPANY, a corporation,
O. J. WALLS, d/b/a O. J. WALLS COMPANY, a corporation,
JOHN D. BAGWELL FARMS AND HATCHERY, INC., a corporation,
CITY OF GUNTERSVILLE, ALABAMA,
Petitioners

v.

SOUTHERN RAILWAY COMPANY, a corporation,
LOUISVILLE & NASHVILLE RAILROAD COMPANY, a corporation,
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY, a corporation,
SEABOARD AIR LINE RAILROAD COMPANY, a corporation,
Respondents

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF STATESVILLE FLOUR MILLS

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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MOTION OF STATESVILLE FLOUR MILLS FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

Statesville Flour Mills of Statesville, North Carolina, files this its Motion for Leave to File a Brief Amicus Curiae in this proceeding and for cause states:

1. Statesville Flour Mills is a manufacturer of flour and feed and a large consumer of grain and as such has a substantial monetary interest in the outcome of this proceeding.

2. Statesville Flour Mills participated extensively in the proceeding before the Interstate Commerce Commission and it desires this Court to know the effect that will be produced upon the grain receiver and processor if the view of the petitioners is adhered to. Statesville's position will not be adequately represented by any other party hereto.

WHEREFORE, Statesville Flour Mills moves that the Court grant it leave to file its Brief Amicus Curiae, copy of which is attached. This Motion dated at Charlotte, North Carolina, this 10th day of December, 1963.

Respectfully submitted,

WHITEFORD S. BLAKENEY
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Attorney for Statesville Flour Mills

Of Counsel:

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BRIEF OF STATESVILLE FLOUR MILLS AS AMICUS CURIAE

Statesville Flour Mills of Statesville, N. C., files this brief for the purpose of apprising the Court of the effect that adoption of the petitioners' view of Section 15(7) of the Interstate Commerce Act would have on millers and processors such as Statesville. A ruling here in favor of the petitioners would have dire effects on Statesville's operation and on that of many other millers and receivers of grain in similar circumstances.

As the affidavit of W. Herman Clark, Traffic Manager of Statesville Flour Mills, shows (R. 28), Statesville

Flour Mills has substantially changed its position in reliance upon the explicit language of Section 15(7) by making large purchases of grain in anticipation of using the proposed reduced rail rates which were expected to become effective in August 1962.

The action of this Court in granting the restraining order against the proposed rates and the possibility that this Court might further enjoin those rates have injected the most paralyzing uncertainty into the day to day business operations of this company. That uncertainty has been compounded due to the granting of the writ of certiorari with its consequent additional but not forecastable delays. In our particular business and in any other business like it, plans have to be made in advance for our supply of raw material, principally wheat and corn.

We believe and we urge upon this Court that Congress intended to limit this period of business uncertainty to seven months. For in a case as complex and lengthy as the one before the Interstate Commerce Commission in this instance, if any individual party or small group of parties has it within their power, by whatever claim, to obtain from some federal court an injunction, this means that all the other parties and persons with a direct interest in the case and in the specific rate action can be hamstrung without limitation and that this period of business uncertainty can be extended beyond all foreseeable limits.

Congress, we submit, had not in mind merely the interests of competing carriers when it wrote Section 15(7) into the Interstate Commerce Act. Congress had in mind surely the vast general public of which we are a member. Congress left intact the carriers' right

(and duty) to initiate rates and it decided in its wisdom to cast the burdens and losses on the proponent carriers for seven months and for that time only; and it further decided that after the expiration of that period the public, in the case of a rate increase, would have to go ahead and pay it; and in the case of a reduction, the public thereafter would be entitled to claim it.

The view to the contrary asserted here by the petitioners can only lead to confusion compounded. For those of us who are caught in this carrier controversy, our losses—due to business actions which had to be taken and which were taken in reliance upon the plain words of the statute—and the monetary savings being denied us because the rail reductions have not been made effective, these losses are to be cast wholly upon us in the view of the petitioners. It is we and people like us, the general public, who have businesses to operate that have no remedy here. Certainly there is no remedy available to us against those parties, small in number and small in interest in this huge proceeding, who have already been responsible for denying us substantial monies for these many months since August 1962.

For the above reasons, the uncertainty that would be injected, the chaos and business confusion that would result and the unfairness of denying to Statesville Flour Mills and others similarly situated the proposed rates when there is no way to recoup those losses, it is submitted that the view of petitioners with regard to Section 15(7) is erroneous and that this Court should hold that the statute is clear and precludes the relief sought by petitioners.

Dated at Charlotte, N. C., this 10th day of December, 1962.

Respectfully submitted,

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